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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 114

THE J. L. HUDSON COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 100–108) is reported in 135 F. (2d) 380. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 69–98) are reported in 42 N. L. R. B. 536.

JURISDICTION

The decree of the court below (R. 99) was entered on April 15, 1943. The petition for a writ of certiorari was filed on June 21, 1943. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Petitioner owns and operates a retail department store in Michigan, where it is engaged in the purchase and sale of various kinds of goods, wares, merchandise, and commodities. Of its purchases 80 percent, valued at about 35 million dollars annually, are received from points outside the State; of its sales, 1.6 percent, having a sales price in excess of 1 million dollars annually, are made, and the merchandise shipped, to customers and users outside the State. The question presented is whether the National Labor Relations Act applies to petitioner.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the appendix.

STATEMENT

Following the issuance of an amended complaint, alleging that petitioner had engaged in and was engaging in unfair labor practices (R. 33–38), the parties on May 12, 1942, entered into a stipulation by which petitioner consented to the issuance of an order by the Board, and, upon application by the Board, to the enforcement of such order by the appropriate circuit court, requiring it in stated terms to cease and desist from its unfair

labor practices and to take certain affirmative action, subject only to the right of petitioner "to be heard in argument orally and by brief upon the facts herein stipulated before the Board and in any appropriate court on the sole issue of the applicability of the Act to the [petitioner] and to the employees of the [petitioner] and the jurisdiction of the Board and such appropriate court to enter against [petitioner] the Order" for which the stipulation provided (R. 59–61). The parties waived their right to hearing and to findings of fact and conclusions of law by the Board except in respect of the jurisdictional issue (R. 59).

On July 16, 1942, the Board, having heard oral argument and having considered the brief and reply brief filed by petitioner, issued its findings of fact, conclusions of law, and the order to which petitioner had consented (R. 69–98). The Board's findings concerning the applicability of the Act to petitioner may be summarized as follows:[1]

Petitioner, a Michigan corporation, owns and operates a very large retail department store in Detroit, Michigan, where it is engaged in the purchase and sale of a great variety of goods (R. 88; R. 47–48). It occupies the entire building known as the J. L. Hudson Building, covering one square

[1] In the following statement the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting portions of the stipulation.

block and consisting of 24 stories above ground and numerous basement levels, as well as five warehouses, also located in Detroit (R. 89; R. 48). The store comprises some 240 departments (R. 90; R. 49–51), and normally employs about 8,560 persons (R. 89; R. 48–49).

During the fiscal year ending January 31, 1943, a representative year (R. 94; R. 58), petitioner purchased for use and sale at its store in Detroit merchandise having a value of $43,864,289, of which over 80 percent, valued at more than 35 million dollars, was shipped to petitioner from points outside Michigan (R. 92; R. 52–53). During the same year, petitioner's total sales aggregated $71,633,737, of which 1.6 percent, valued at $1,291,006, were made and the goods shipped to customers and users outside the State. The greater portion of these sales resulting in shipments to points outside the State were sales made to local customers; mail-order sales alone, however, amounted to $553,841.37, of which approximately 15 percent, representing over $80,000, were made direct to out-of-State customers (R. 93; R. 53). Interstate shipments to and from petitioner are made by common carriers (R. 93; R. 54).

During the fiscal year, petitioner spent $1,544,265.23 for advertising in newspapers, periodicals, and by radio and direct mail (R. 93–94; R. 54–58). Of this sum $243,593.18 was expended in advertising in states other than Michigan (*ibid.*).

Upon these facts the Board concluded that petitioner was subject to the Act (R. 96).

On October 14, 1942, the Board filed in the court below a petition for enforcement of its order (R. 1). Petitioner answered, requesting dismissal of the Board's petition (R. 5). By its opinion of April 15, 1943, and its decree of the same date (R. 99–108), the court enforced the Board's order in full.

ARGUMENT

Petitioner's contention (Pet. 10–11) that the Act may not be applied to its operations is without merit. The court below, upon a full consideration of the facts, properly resolved the issue of the Act's applicability to petitioner. Its ruling presents no conflict of decisions.

Eighty percent of the merchandise, amounting to more than 43 million dollars annually, sold and distributed by petitioner is received by it through the usual channels of interstate commerce (*supra*, p. 4). That commerce alone brings petitioner within the ambit of Federal authority. Cf. *Local 167, International Brotherhood of Teamsters* v. *United States*, 291 U. S. 293, 297; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 290–291; *Newport News Shipbuilding & Dry Dock Co.* v. *National Labor Relations Board*, 101 F. (2d) 841, 843 (C. C. A. 4), modified in other respects, 308 U. S. 241; *National Labor Relations Board* v. *Virginia Electric & Power Co.*, 115 F. (2d) 414,

416 (C. C. A. 4), reversed and remanded on other grounds, 314 U. S. 469, 476.

A further basis for the exercise of Federal authority is petitioner's shipment in interstate commerce of merchandise sold by it having an annual value in excess of one and a quarter million dollars. Cf. *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board,* 303 U. S. 453, 464–465. While a substantial portion of these shipments results from sales to local customers, interstate business is solicited by petitioner through its advertising in out-of-State publications and through advertising media which have out-of-State coverage (*supra,* p. 4).

Petitioner's contention (Pet. 10–11) that there is a fatal lack of findings of unfair labor practices or that the practices of petitioner tended to lead to a labor controversy burdening or obstructing commerce is mistaken. The parties, by the stipulation upon which the Board's order was issued (*supra,* p. 3; R. 59–61), clearly intended that the Board should determine upon the stipulated facts whether the Act was applicable to petitioner and its employees. The Board made this determination and, having found the Act applicable, thereupon entered the order, to which petitioner had previously consented (R. 88–98). The Board did not, and was not required to, make a specific finding as to the existence of the unfair labor practices or their effect on commerce since all findings,

other than that pertaining to the applicability of the Act, had been expressly waived by the parties.[2] In any event, the terms of the order to which petitioner consented, providing as they do that petitioner cease and desist its interference and discrimination, reinstate three employees with back pay, and post notices (R. 97–98; R. 59–60), show that the unfair labor practices here involved are those prohibited by the Act. In view of the Congressional findings enunciated in Section 1 of the Act (*infra*, pp. 9–10), the entry of the order in question is not open to challenge because of the absence of specific findings that the unfair labor practices have interfered with commerce. *Na-*

[2] That an employer may waive the normal requirement that the Board state its findings of fact concerning the unfair labor practices and may stipulate as to the form of order to be entered by the Board, and that in such event the Board need not take evidence and make findings as to the unfair labor practices alleged in the complaint, is now well settled. Cf. *National Labor Relations Board* v. *Henry Levaur, Inc.*, 115 F. (2d) 105 (C. C. A. 1), certiorari denied, 312 U. S. 682; *National Labor Relations Board* v. *William B. Carroll*, 120 F. (2d) 457 (C. C. A. 1); *National Labor Relations Board* v. *Pure Oil Co.*, 103 F. (2d) 497 (C. C. A. 5); *National Labor Relations Board* v. *Gerling Furniture Mfg. Co.*, 103 F. (2d) 663 (C. C. A. 7); *National Labor Relations Board* v. *Robert S. Green, Inc.*, 125 F. (2d) 485 (C. C. A. 4). Nor does the entry of the order upon stipulation and consent detract from its force. *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146, 155; *Swift & Co.* v. *United States*, 276 U. S. 311, 327. The stipulation procedure followed here was not present in the cases relied upon by petitioner (Pet. 25, 27).

tional Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 42, 43.

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY 1943.